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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,666	09/12/2003	Paul B. Aamodt	P-11617.00	9148
27581	7590	09/05/2006	EXAMINER	
MEDTRONIC, INC. 710 MEDTRONIC PARK MINNEAPOLIS, MN 55432-9924				LEE, CYNTHIA K
		ART UNIT		PAPER NUMBER
		1745		

DATE MAILED: 09/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/661,666	AAMODT, PAUL B.
	Examiner Cynthia Lee	Art Unit 1745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 September 2003.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.
  - 4a) Of the above claim(s) 10-12 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-9 and 13-15 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 September 2003 is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>2/7/2005</u>	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-9 and 13-15, drawn to a separator subassembly, classified in class 429, subclass 131.
- II. Claims 10-12, drawn to a method of making a separator assembly, classified in class 29, subclass 623.1.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make another and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the method can be used by a product that does not require an aperture corresponding to an electrical tab member.

Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Paul McDowell on 7/25/2006 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-9 and 13-15. Affirmation of this election must be made by applicant in replying

to this Office action. Claims 10-12 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Information Disclosure Statement***

The Information Disclosure Statement (IDS) filed 2/7/2005 has been placed in the application file and the information referred to therein has been considered.

***Drawings***

The drawings received 9/12/2003 are acceptable for examination purposes.

***Claim Objections***

Claim 6: The recitation "a electrical tab member" should be "an electrical tab member"

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kelm (US 486215) in view of Spillman (US 5631102).

Kelm discloses a separator subassembly for a coiled electrode-type electrochemical cell comprising an elongated separator layer. Kelm discloses that the anode assembly comprises an alkali metal, preferably lithium metal, and the current collector comprises a corrosion-resistant metal, preferably nickel, copper or an alloy of nickel and copper (4:20-25 and 35-40) (instant claims 8 and 9). Kelm discloses that the

separator can be made of microporous polyolefin (i.e. polyethylene or polypropylene) separator material such as Celgard (5:1-5) (applicant's dielectric material, instant claim 13).

Kelm disclose that the separator assembly covers the anode assembly and forms a pocket around the anode assembly since it folds over (applicant's longitudinal crease, instant claim 5) at the top edge and conforms to the anode assembly until it reaches the bottom edge where it is joined to itself at a seal. Slits can be cut in the separator to allow the connector tabs to project through the separator (4:60-65) (instant claims 2, 6, 15).

Kelm does not disclose a spacer layer. However, Spillman teaches a separator insert (applicant's spacer layer) in addition to the main separator in an electrochemical cell. A preferred material for the separator insert is a woven or nonwoven fluoropolymer material (applicant's dielectric material). This polymeric material is chemically inert to the components used in alkali metal cells, is corrosion resistant and does not decompose at normal battery temperatures. Preferably, the separator insert covers at least each side of the cathode means in a spirally wound electrode stack and extends less than one-half the total length thereof. The separator insert covers the leading edge and at least one side of one of the electrodes in the cell. This provides additional protection against internal short circuit conditions due to tearing or puncture of the traditional separator caused by exposed electrode current collector screens (abstract, 2:30-35, 4:15-40, fig. 1). Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the separator insert and cover the current

collector as taught by Spillman to Kelm's anode or the cathode for the benefit of preventing short circuit caused by corrosion and puncturing at the current collector.

Spillman does not disclose that the spacer layer is relatively thicker than the separator layer (instant claim 3). However, it is obvious that in general, a thicker material is more robust and more resistant to the external forces. Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the separator insert (applicant's spacer layer) thicker than the separator because Spillman teaches that the separator insert is useful to augment the main separator and what is important is that the separator insert provides additional protection against internal short circuit conditions due to tearing or puncture of the traditional or main separator by exposed electrode current collector screens (5:15-25). A thicker separator insert would provide the extra support in the leading current collector region while avoiding unnecessary mechanical enhancement in the main separator.

Regarding claims 4 and 13, Kelm and Spillman do not disclose that a portion of the separator layer approximately the size of the spacer layer is absent. However, the Examiner notes that it is an obvious variant of the combination of Kelm and Spillman. Either configuration achieves protection of the current collector. It would have been obvious to one of ordinary skill in the art at the time the invention was made replace an absent portion of the separator layer with a spacer layer should one decide to use a different, more robust material for the spacer material. In this case, the separator layer would not be necessary and the absence of the separator material would reduce weight of the battery. If a spacer layer were in place of the separator layer, a mechanical or a

chemical bond would have to be present that bonds the two interfaces. Spillman's separator insert material is disposed along an edge of the separator (see fig. 1) (instant claim 14).

The combination of Kelm and Spillman would yield one spacer layer. Kelm and Spillman do not disclose that the separator assembly comprises at least two spacer layers (instant claim 7). However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add multiple layers for the benefit of extra support and protection against puncture. Further, it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia Lee whose telephone number is 571-272-8699. The examiner can normally be reached on Monday-Friday 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached on 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1745

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ckl

Cynthia Lee

J-C  
JONATHAN CREPEAU  
PRIMARY EXAMINER